

State of New Jersey
Department of Labor and Workforce Development
Board of Review

MEMORANDUM

To: Cornelia Calderone, Chair, Joseph Sieber,
Vice Chairman, and Frank Serico, Member

From: Sarah Barnwell, Appellate Specialist
Board of Review

Subject: Minutes of the January 18, 2006
Board of Review Meeting

Date: January 19, 2006

THESE MINUTES HAVE NOT BEEN FORMALLY APPROVED AND ARE SUBJECT TO
CHANGE OR MODIFICATION BY THE BOARD OF REVIEW AT ITS NEXT MEETING.

1. **FORMAL OPENING:** A regular meeting of the Board of Review, Department of Labor was held on Wednesday, January 18, 2006 at 9:00 a.m. at the Board of Review offices, Labor Building, John Fitch Plaza, 7th Floor, Large Conference Room, Trenton, New Jersey. Notice of said meeting was posted in the Board of Review's office, filed with the Secretary of State, and published annually in The Trenton Times and The Star Ledger. It was noted that the next regular meeting of the Board of Review is scheduled for Wednesday, January 25, 2006 at 9:00 a.m. at the Board of Review offices, Labor Building, John Fitch Plaza, 7th Floor, Large Conference Room, Trenton, New Jersey.

Roll Call: Present: Ms. Calderone, Chair
Mr. Sieber, Vice Chair
Mr. Serico, Member
Ms. Barnwell, Appellate Specialist
Absent: Mr. Yarbrough, Executive Secretary

2. Following a motion by Mr. Serico and seconded by Mr. Sieber, the minutes of the January 11, 2006 meeting were approved.

3. New Business

(a) 91,647

Mr. Maddow presented this case that involved a claimant who appealed from a Deputy's determination holding the claimant exhausted all benefit entitlement, under the disability during unemployment program, with payment for week ending October 15, 2005. The claimant wished to reopen a previously established claim for disability benefits under State Plan for payment beyond October 15, 2005. The Appeal Tribunal had held the claimant ineligible for disability benefits from November 21, 2004 through November 19, 2005. Following discussion, the Board noted that the Appeal

Tribunal lacked jurisdiction prior to October 15, 2005 and voted that the decision was a nullity. The Board also noted the claimant had exhausted all entitlement to regular unemployment benefits, additional benefits during training and disability benefits during unemployment and that the claimant was not entitled to benefits on the previously established State Plan claim because his second period of disability occurred more than 14 days after recovery. The Board voted to modify the decision of the Appeal Tribunal. Mr. Maddow will prepare the decision.

(b) 92,769

Mr. Maddow presented this case that involved a registered nurse who requested an alternative base year after receiving Workers' Compensation. The Appeal Tribunal had held the claimant did not meet the criteria for an alternative base year because the period of disability exceeded two years, in accordance with N.J.S.A. 43:21-19(c)(2). Following discussion, the Board voted to affirm the decision of the Appeal Tribunal, with the exception that N.J.S.A. 43:21-19(c)(3) was controlling. Mr. Maddow will prepare the decision.

(c) 88,810

Mr. Morley presented this case that involved a case manager who was discharged for failure to inform the employer that an employee was involved in a romantic relationship with a client. The Appeal Tribunal had held the claimant disqualified under N.J.S.A. 43:21-5(b). Following discussion, the Board noted that the claimant's failure to divulge this information constituted misconduct and voted to affirm the decision of the Appeal Tribunal.

(d) 92,163

Ms. Gagliardo presented this case that involved the claimant's appeal from a determination of the Deputy holding the claimant disqualified under N.J.S.A. 43:21-5(b) and ineligible under N.J.S.A. 43:21-4(c). The Appeal Tribunal had held the claimant was on a leave of absence and the claim invalid. The Appeal Tribunal also held the matters of discharge and ability to work were academic. Following discussion, the Board noted that the record was incomplete and voted to remand the matter for additional testimony regarding whether the claimant was unemployed, discharged for misconduct and able to work. Ms. Gagliardo will prepare the remand.

(e) 95,081

Ms. Gagliardo presented this case that involved a mechanic who was on a leave of absence when he filed his claim. The Appeal Tribunal had held the claim invalid under Docket No. 92,163, so the Deputy issued an initial determination that the claim was invalid, which was appealed. The Appeal Tribunal affirmed the Deputy, and the employer, on behalf of the claimant filed an appeal to the Board of Review. Following discussion, the Board

noted that the Deputy lacked authority to issue a determination already addressed by the Appeal Tribunal under 92,163 and voted that the determination was a nullity. The Board further noted that the employer's appeal on the claimant's behalf will be decided under Docket No. 92,163. Ms. Gagliardo will prepare the decision, which will also set aside the Appeal Tribunal decision for lack of jurisdiction.

(f) 87,313

As presented by Mr. Gitter, this case involved a chef who left the job after the employer implemented a new pay arrangement as a form of discipline for sub-standard performance. The Appeal Tribunal had held the claimant disqualified under N.J.S.A. 43:21-5(c). Following, discussion, the Board voted to affirm the decision of the Appeal Tribunal.

There being no further business to transact, a motion was made by Mr. Sieber to adjourn the meeting. Mr. Serico seconded the motion.

SUBMITTED FOR APPROVAL:

Sarah Barnwell
Appellate Specialist

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